

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 16, 1999 at 8:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 408, 2/12/1999
SB 360, 2/12/1999
SB 459, 2/12/1999
SB 439, 2/12/1999
Executive Action: SB 439; SB 263; SB 409

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HEARING ON SB 408

Sponsor: SENATOR JON ELLINGSON, SD 33, MISSOULA

Proponents: Bob Anderson, Public Service Commissioner
Debbie Smith, NRDC/RNP

Opponents: Ed Bartlett, Montana Power Company

Opening Statement by Sponsor:

SENATOR JON ELLINGSON, SD 33, MISSOULA. This bill gives the Public Service Commission the power and authority to regulate electricity for small consumers if (but only if) workable competition is not created. Last Session we dealt with the deregulation of the electric utility industry which provided that big customers would have a choice of an electricity supplier on or before July 1, 1998. For all others, the bill mandated the choice be given them by July 1, 2002, with the possible extension of 2004. What if workable competition doesn't exist by either of those dates for small customers? As the utility deregulation statutory stands right now, they will have neither the benefit of choice nor the protection of regulated rates; **SB 408** attempts to address that possibility and will remain only as long as workable competition does not exist. The utility deregulation bill was passed with great expectations of benefit for all consumers, large and small. We must make certain that our small consumers don't suffer if the benefits of choice and competition don't reach them. You will also be hearing SB 406 and SB 211 and I suggest no action on **SB 408** be taken until you hear the other two.

Proponents' Testimony:

Bob Anderson, Public Service Commissioner. We support **SB 408** and feel the sponsor has given a good description of the bill and its purpose, i.e. whether the vision of SB 390 will be fulfilled by the time the deadlines occur. If it isn't, something will have to be done for small customers; however, if it is fulfilled, everybody will be happy and **SB 408**, even if enacted, won't be needed. In other words, **SB 408** is a safety net. I agree with **SEN. ELLINGSON'S** suggestion that no action be taken on this bill until SB 406 and SB 211 are heard -- consider all three in the same context.

Debbie Smith, Natural Resources Defense Council & Renewable Northwest Project. This bill should be considered in the context of the other two, particularly SB 406. I worked closely with the Committee that worked on SB 406 and we intended to incorporate the provisions of **SB 408**, though I'm not sure that was accomplished so this Committee needs to consider both bills together. At a minimum, I would suggest the Legislature needs to adopt the provisions of **SB 408** even if you don't need to go

forward with allowing alternative suppliers; it's necessary to provide this safety net for small customers because we now know workable competition may not develop for them by that date because the profit margins are too low.

Opponents' Testimony:

Ed Bartlett, Montana Power Company (MPC). MPC sees this bill as a total position to re-regulate customer choice and we are opposed. "Date certain" is very important to customer choice in Montana and its deletion puts customer choice in total jeopardy. Also, we see as a problem the taking away of opportunity for customer choice for over 99% of MPC's customers, i.e. allowing choice for only the largest customers, or about 250 of our 280,000 customers. We think it's wrong to put the public policy decisions in the hands of PSC; they should remain with the legislature, through the Transition Advisory Committee. Over the next several years, that Committee should determine whether customer choice is working; if not, that Committee should recommend to the Legislature who should then decide those public policy issues.

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Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked for clarification regarding unpredictability and some people needing a safety net. **Ed Bartlett** said he disagreed with that because SB 390 created an orderly process of transition to customer choice, beginning with those 250 largest customers. Over the next four years, through pilot programs, an orderly transition, customer education and plan approved by PSC gets implemented. The orderly process and predictability just started and his position was over the next three years those customers will have choice and they will choose.

SEN. SPRAGUE asked for comment on the idea it would improve competition to put it back in the hands of PSC. **Mr. Bartlett** said it didn't improve competition at all; rather, it had the possible effect of hindering competition because those 99% of MPC's customers didn't get the opportunity to choose. The PSC decided if ever they get that opportunity.

SEN. SPRAGUE asked the same comment from **Debbie Smith** who said she mis-spoke if she said this improved competition; rather, this process does nothing to affect whether competition develops for these small or large markets. This process deals with default supplier which is the entity that provides electrical supply

service in a deregulated utility environment. This bill and the other two you will hear deal only with MPC because MDU was on its own schedule. This bill says PSC will regulate the rates of the supplier, which right now is only MPC, until workable competition develops. She didn't believe they had a disagreement with MPC because the default supplier would be regulated by PSC until workable competition developed. It is important to ensure the default supplier isn't setting unregulated, monopolistic rates. Senate Bill 390 allowed large customers to go off the system in an orderly way that protected small customers; however, utility restructuring is not something the legislature can address once and think it's done -- it will require the legislature's on-going attention. I want to repeat this is neutral on the competition issue -- it neither enhances or impedes competition.

SEN. FRED THOMAS asked why **SB 408** was needed. **SEN. ELLINGSON** said if we wait a couple more years, the planning process for this category of consumers was left in limbo. Power suppliers needed to be able to plan around the possibility they would be obligated on July 1, 2002, or 2004, to provide the consumers as the default provider. If this bill isn't there, the companies can legitimately conclude they have no responsibility in this matter and make their long-term plans around that conclusion.

SEN. THOMAS commented the purpose was for the companies to plan for the lack of competition. **SEN. ELLINGSON** said he didn't see an inevitability but saw a potential. He didn't discount the possibility there might be workable competition, in which case PSC wouldn't have any regulatory authority and everyone would go on their merry deregulated way. However, he thought it was important for the power company to think of this as a possibility -- in the absence of this bill, there is no responsibility to do so. Rulemaking by PSC is not something that can be done overnight; therefore, they need to be charged with this possibility so it can develop rules in a measured fashion.

SEN. THOMAS asked about the conflicting signals being sent. The possibility exists that the market won't establish itself, so if you're going to market electricity in America, you might not want to come to Montana. **SEN. ELLINGSON** said he didn't consider it a conflicting signal because PSC has the power to regulate only if workable competition doesn't exist. He didn't think he or anyone else could guarantee that workable competition would exist. All possibilities have to be considered, and one possibility is it won't; this bill simply recognizes this possibility. Montana recognizes these possibilities, has considered all of them, and is ready to accept competition within this framework; however, if competition is not created for the small consumers, we're ready

to continue regulating, but only until workable competition exists.

SEN. THOMAS commented the language about not delaying beyond July 1, 2004, was being stricken and asked how many times the legislature would meet between now and then. **SEN. ELLINGSON** said it would be twice.

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SEN. MIKE SPRAGUE asked for the definition of "workable competition." **SEN. ELLINGSON** suggested if there was one supplier, that wasn't workable competition; if there were two and they weren't trying to divide up the market, that was a stab at workable competition. Adam Smith said "workable competition" required an infinite number of suppliers and providers; only through the working of the market place with that infinite number would there be true benefits of free market. Therefore, it would probably be somewhere between two and infinity; however, PSC would be the best entity to give direction.

Closing by Sponsor:

SENATOR ELLINGSON. The power company seems to feel this bill is designed to repeal certain important sections of SB 390, but that's not the case. If you look closely at the bill, you can see why. On Page 1, Line 19, existing law says the PSC has the existing authority to determine additional time is necessary for the small consumers to transition to the competitive market place. Line 28 says this power will continue to reside with the PSC only if workable competition does not exist. If there will be many power suppliers coming in to provide workable competition, the PSC will have no continuing authority; however, we have to consider the possibility there may be none. California is a state that has the biggest market and residential power consumption in the nation; however, the biggest supplier in the area decided there wasn't enough of a market in California to be of any interest to them so they decided not to market to consumers in California. Montana's market is many times smaller, so if no companies decide to come in so small consumers can have choice, they need some other protection against power being supplied to them by just one or two suppliers. I encourage you to consider it favorably and in reference to the other two bills.

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HEARING ON SB 360

Sponsor: SENATOR EVE FRANKLIN, SD 21, GREAT FALLS

Proponents: Jim Lechner, Exe. Director, MT Coalition Against
Unfair Utility Competition
Bob Anderson, Public Service Commission
Linda Holzheimer, Great Falls
Alan Walter, AW Repair
Jay Gifford, Havre
Mark Horton, Great Falls
Jerry Winchell, Billings
Ron Singer, SMW 103
Pat Harman, Billings
Jeff Scherr, Billings
Larry Seed, Kalispell
Gary McCann, Empire Heating, Billings
Riley Johnson, NFIB
Carl Schweitzer, MT Plumbers
Doug Reed, Billings

Opponents: John Alke, Montana Dakota Utility
Dave Gates, Montana Power Company

Opening Statement by Sponsor:

SENATOR EVE FRANKLIN, SD 21, GREAT FALLS. I was contacted by a constituent of mine who told me her story of how she was having difficulty maintaining her business in light of what she genuinely described as an unlevel competitive playing field with the local utility. I will share an issue that needs to be on our legislative map; if we don't deal with it this Session, it will haunt us in ways that will be harmful to our business community. In fact, if we don't deal with it soon, we won't have a business community here to talk about it. The basis of **SB 360** is unfair utility competition; the essence of the bill asks utility companies not to cease and desist, but to separate their transmission and distribution businesses from their merchandising and servicing function. The businesses which are here to testify have found they cannot compete in any fair way with utility companies because the law allows the utility companies to be involved in transmission and distribution but also in sales and servicing. Deregulation has made matters worse because the only authority the PSC currently has in looking at the separation of those businesses is they can audit them and ensure servicing and merchandising businesses aren't built into the rates the customers paid. However, PSC had no way of being out in the field looking at the ways utility companies put small businesses

at a disadvantage. This bill is not a protectionist bill for small business or a labor bill, but unfair utility competition is when a utility abuses its market power in order to promote competitor products or services that it or its subsidiaries are selling. Utilities are allowed to provide additional services and we can't ask them to discontinue that; what we are asking is for them to subject themselves to some measures which will allow small businesses to compete more fairly. This proposal is extremely modest, but is very basic. It just asks utilities to separate out and not cross-subsidize their utility transmission and distribution from service and merchandise.

Deregulation is changing the nature of the companies. One of the largest national utilities also owns the third largest real estate company, nationally. If we don't assist the small businesses now, we will be doing irreparable damage to the main street businesses in ways we barely understand. Utility companies will say they already separate out those components but it is in the most cursory of ways. It requires separate bookkeeping, but only to the end that utility rates are not subsidized. Look at the kinds of things utility companies have who have been in business for 60 years: logo use, marketing data, customer steering, credit structures, etc. These are things small businesses can't compete with. I ask you to listen to some of the issues you will hear today and ask questions of how to move forward to try to impact this situation for small business.

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Proponents' Testimony:

Jim Lechner, Montana Coalition Against Unfair Utility

Competition. He read his written testimony **EXHIBIT (bus38a01)** and distributed copies of **EXHIBIT (bus38a02)**.

Bob Anderson, Public Service Commission (PSC). PSC supports this bill on a 3-2 majority. I will address the concerns of the Commission minority: (1)"Competition is competition -- that's the world we live in. If you don't like it, that's just the way it works." On that point, I would suggest some amendments **EXHIBIT (bus38a03)** be considered, i.e. the Commission be authorized on a case-by-case basis to make a finding whether or not there might be unfair competition; (2)Harm to residential customers, especially in sparsely populated areas where there really isn't any competition. The amendments address that concern also.

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Linda Holzheimer, Retail Business, Great Falls. The gas company came to us and asked us to display our products in their store, basically saying they wanted to extend our show space, i.e. have another retail showing area. We were to inventory, warranty, star, warehouse, install and service the product. They would only put it on their floor to sell. When it was sold, we would pay them a commission. After about a year, the gas company came back to us and said they wanted more money because we weren't paying a big enough commission. They gave the reason as being we made a bigger profit on our products than what the gas dryer and range people made on their product. We told them all they initially wanted to do was sell more gas. From this, our agreement progressed to our products sitting on their floor and we didn't do any more installation. They would order from us, pick it up and do the installation. From there it went to our products sitting on their floor for over a year-and-a-half while they ordered through another distributor. What I want to make clear is as this progressed, their rules changed; at this point it's gone past rules and their ethics have changed. We went to the PSC and they indicated it was a very expensive process to hire a lawyer and try to fight them. They suggested negotiating so we started the process and had meetings about every two weeks or so. The meetings ended with their director of public affairs creating a scene and telling us there wasn't anything we could do because they were within their rights (and by law they are, I'll admit) and we'd better learn to live with it.

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Negotiations ended with nothing happening. They have created a huge business by using all our products, their facilities, their services. It has taken the rest of us retailers years to get to that point, while it took them only a couple. The reason they've done that is because most people perceive a utility company as someone to call for everything. It's not fair practice they can use their logo to sell at a retail level. Another thing they do is offer a 0% interest loan of \$1,500, and we are all able to offer that; however, if someone goes into the gas company and shops there, the customer leaves there with the perception they can't get that loan unless they buy it directly from the gas company. That's not fair. Wouldn't it be great if a retail store owner would be able to have the competitors' invoices of everything they sold their customers? Our major competitor has that because they get a copy of every 0% loan we make for them and they get a copy of our final invoice that gives every single thing charged -- another unfair practice. I know we can't outlaw them from doing business but we'd like to put them on a competitive playing field, i.e. compel them to pay real overhead.

Alan Walter, AW Repair. A man drives around in a distribution truck and he gets a service call; when he takes that call, he's now on a service call. At the present time there is no way to know that separation, so there is cross-subsidizing. We've been using utilities to police the industry. They go into the home for minor maintenance and maybe they'll correct the problem or perhaps we will; however, if they're in control who's going to do it.

Jay Gifford, Gifford Refrigeration, Havre. I've learned that no matter how the legislative process seems, it seems to work pretty well; when it doesn't work, the legislature seems to fix things. This bill allows a chance to do something about a particular item before we have to do any repair. I'm asking you to monitor utility companies and make them play by rules that we have to play by every day. Everybody is a customer of a utility which sends a monthly bill. What's to stop you from putting a stuffer in there. The line between transmission and generation and service sales and installation has to be determined. If it's left ungoverned, it could be very detrimental to the "Mom and Pop" businesses in Montana.

Mark Horton, All Seasons Spas and Stoves, Great Falls. I feel like we created a monster mostly because we're the ones who put the appliances on the utility's floor. They started out by selling the product for us but now buy the product from the manufacturers. They have an unfair practice because they can have employees going out to do construction and when they come to hook up your gas line they'll ask you where you're getting your appliances. Then they'll suggest you see their showroom. I feel that's wrong.

Jerry Winchell, Central Sheet Metal, Billings. We've been a family business for 55 years. We monitor our service very well and have built up quite a clientele but the present competition with our utility has caused a 20-30% decrease in our accounts. This decrease is due to stuffers, etc. This competition can be devastating to a lot of wholesalers. MDU is now bringing equipment in from out-of-state, which affects our suppliers and ourselves. It will affect more than just "Mom and Pop" operations.

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Ron Singer, Sheet Metal Works 103. If the utility companies are allowed to service, repair and merchandise these appliances it will be a hardship on our employers and employees. We also have a four-year apprenticeship program to train sheet metal workers in this line of work. I urge you to support **SB 360**.

Pat Harmon, Midwest Heating and Cooling. We've had a family operation for 27 years but the business is changing; however, we don't have a problem with business changing because competition is a good thing. However, it is hard to compete against MDU with their name recognition, cross-overs from initial providing of gas to servicing and installation of appliances. It will have a big impact when they start installing furnaces because that's mainly what we do. If they are unregulated coming in, nobody will be there to police and inspect their work because they're in that capacity now. I urge you to vote for **SB 360**.

Jeff Scherr, Comfort Heating, Billings. I have no problem with competition because some of the people here are my competitors on an everyday basis. The unlevel playing field comes from the fact customers who believe the utility company will do them no wrong probably will not shop around for competitive bids. They are the administrative authority. When I go out, I sell my company, my product and my reputation; however, there's nothing for the utility company to sell because they aren't even actively selling because they're already there. If your furnace goes out at midnight and your carbon monoxide detector goes off, they will fix it free of charge, but they can condemn your furnace and hand you an estimate in one package. I pay for my shop, Workers' Compensation, etc., but these folks already have their own building and are using gas which is subsidized by their customers in their own vehicles. We're asking for a level playing field, which this bill would give us.

Larry Seed, A & T Heating, Kalispell. I don't have any specific argument with any of the utilities. I'm a one-man shop; perhaps, of my peers here today, one of the smallest. If any of you build a building, purchase vehicles, hire men and set up across the street from me, that's one thing; however, I don't have anyone else. I feed my family from what I do. If they can drive up under the same auspices they do on a regular safety check and do service work, that's not fair because service is the meat and potatoes of my business. I'm speaking in favor of the bill.

Gary McCann, Empire Heating & Cooling, Billings. My national organization has fought this in all states; therefore, we are in strong support nationwide as well throughout Montana. Please consider the bill favorably.

Riley Johnson, National Federation of Independent Businesses. I think these individuals have spoken very well on the subject. Last year we surveyed our members and they overwhelmingly supported legislation like **SB 360**. This bill doesn't apply strictly to sheet metal workers and appliance people. We have

members in Bozeman who are in the same situation with commercial lighting. We urge your support of **SB 360**.

Carl Schweitzer, Montana Plumbers Association. We stand in support of the bill. When you get your electric bill, some of the money you will pay is for services which is a regulated cost that's subsidized. The appliance end of the utility companies isn't fair because the small dealers don't have that subsidy. We need a level playing field.

Doug Reed, Gensco, Inc., Billings. I work for a wholesaler and that part of business will also be affected. As the utilities come in and get a foothold on the market, they will also go factory-direct. Through the financial support of their rate payers, they will be able to make an impressive case for bypassing another part of the industry.

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Opponents' Testimony:

John Alke, Montana Dakota Utilities (MDU). MDU is one of the last utility companies in the state to stop actively selling appliances. We phased that out in the early 1980's because we felt the company wasn't making enough money. It was only recently MDU has gotten involved on the service side. **Mr.**

Lechner talked about our Preferred Service Contract, which is something our customers like. For \$8.95 per month, if your furnace or water goes out in the middle of the night, you have a right to call an 800 number and MDU will dispatch a man to your house right then. Apparently that is the program the proponents of **SB 360** don't like. Also, it has been alleged this service is subsidized but that is completely false; what this bill actually does is require our unregulated function to subsidize our utility function. The purpose of **SB 360** is to require subsidy the other way.

As a regulated public utility, we are required to use highly sophisticated, uniform accounting procedures that are designed specifically to prevent the kinds of subsidies that have been alleged. This matter has been before PSC many times, on the allegation there is a subsidy; however, PSC has rejected those allegations because PSC sets our rates, knows how the rate process is driven by the accounting and knows no such subsidy occurs. PSC has never been interested in allowing us to subsidize unregulated enterprises with utility services. It simply isn't happening.

This bill insists the subsidy be created which would go from unregulated to regulated. On page 3, Lines 4-5, the bill describes the plan a utility must submit to the Commission as the price of doing business. One of the things required is "the amount of royalty paid to the utility or transmission or distribution of services provider or, if royalty payment is not made, the reason for non-payment." This bill purports to empower the PSC to determine that our unregulated businesses and companies must pay a royalty to be determined by the PSC to the utility customer. The proponents of this bill hope the PSC will see "golden eggs" and set very high royalty payments to subsidize utility rates. In rate-making, this bill requires us to pay for something that we are not allowed to get any return on. In the utility rate-making process, there is no such thing as good will. You don't earn money on your name or logo; the only thing allowed is hard assets. This bill says, for the purpose of making our lives miserable on the unregulated side, it will pretend there's such a creature and make the unregulated side pay a royalty to the regulated side.

The purpose of this bill is not to have a level playing field but to make the life of a utility so miserable they won't be in the business. Suppose you had a business and one of your competitors brought a bill which said you had to pay some of your profits to someone else because that was the only way to make competition fair. This bill does not allow you to talk about level playing field and fair competition in the same breath. It isn't unfair competition to provide your customers with service which they like at a reasonable price. We ask for a DO NOT PASS recommendation.

{Tape : 1; Side : B; Approx. Time Counter : 22}

Dave Gates, Montana Power Company (MPC). He read his written testimony **EXHIBIT (bus38a04)**.

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked if there were the same level playing field in taxation relative to public utility vs. their service rate paid. **Jerome Anderson** said he didn't know. Taxes or costs utilities were entitled to recover were through bills they brought to them and paid them. **John Alke** said small and large businesses were taxed the same on an income tax basis but not on a property tax basis.

SEN. SPRAGUE asked what would level the playing field in terms of fairness. **Jerry Winchell** said MDU had the name and number of everyone in Yellowstone County; they could move right across the

street from his business and build a \$3 million building to house their 20 trucks, etc., i.e. they have a conglomerate. What we're worried about is they could go to a homeowner and tell them they needed a new furnace, MDU sold them and they could take four years to pay. All of us together can't fight their assets.

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SEN. JOHN HERTEL asked for elaboration on the amendments. **Jerome Anderson** said the important part of their amendments were in Section 3. The "if" part envisions a complaint case brought by a customer, the utility itself or initiated by the Commission. The case would be decided, based on a record of facts and merits. We would then decide if the allegations of unfair competition were true; also we would consider the interests of the customer. If we made that finding we could tell the company if they were going to continue doing this, they could continue under a separate subsidiary or we could tell them to not do it at all, except for routine stuff.

SEN. HERTEL said it was strictly up to the PSC to determine that and **Mr. Anderson** said it was.

SEN. SPRAGUE commented currently the PSC was split, 3-2; therefore, if they voted on the complaint, the vote could again be 3-2. Wouldn't that be disagreement on the agreement? **Jerome Anderson** said PSC had a diverse set of opinions and values, just as the legislature. However, with the authority behind them, it was their job to decide on the merits and it could tip one way or the other.

SEN. SPRAGUE commented these private individuals had to have an organization to hire an attorney to compete with the larger companies which already had a staff attorney. If the complaint was rather localized, the individual involved would have to appear and show cause why it was unfair. **Mr. Anderson** said the burden would have to be on the complainant who would have to present evidence that PSC would have to consider.

SEN. HERTEL said the PSC was split on the bill itself and that was affirmed. He asked whether the amendments were mutually agreed upon. **Jerome Anderson** said the minority neither supported nor opposed the amendments. They do not support the bill as originally drafted.

SEN. SPRAGUE asked what the ideal world would be, given the fact that big business wasn't going to go away and he hoped little business wouldn't either. **Pat Harmon** said he didn't necessarily think it was a fight over big vs. little. They were a little

shop and had no desire to have lots of employees. What would level the playing field might be when they bought a service van for \$20,000, it had to be inventoried, insurance paid on it, etc. The van would be specifically used for service work or installation of stuff. If they could cross-section that like utility companies did, and incorporate that into two different entities, it would mean he was helping pay part of the fees that were being used to compete against him. He said he encouraged fair competition when it was a separate entity. It was getting harder to start a business because it was getting so technical and it was difficult to start up against that competition.

SEN. BEA MCCARTHY asked for comment from **Jerry Breen, Breen Oil Company, Choteau**, who said the basics were in the heating and installation business it took a lot of money or a long time to get started. The question to MDU or PSC was since MDU hasn't been around for that long a time, how did they get so big? Did they take earnings from their rate base (allowed by PSC) or from people who were supposed to be representing them through marketing, i.e. using that resource to distribute this equipment. He didn't know where the money could come from for a business that size. Either it came from a bank or from earnings somewhere else. (**Mr. Breen** submitted **EXHIBIT (bus38a05)**).

SEN. MCCARTHY asked for comment from **Larry Seed** who said he listened to MDU say customers liked the service for \$8.95 per month. He questioned how many file cabinets he had in his office, because in his company, he had two four-drawer file cabinets which was his company. If he tried to offer that same \$8.95 service to all his customers and had to come to their home, he would be finished; whereas, if he had thousands of customers, he would be in a different situation because it would be one of scale -- the two scales would be opposing.

{Tape : 1; Side : B; Approx. Time Counter : 42.2}

Closing by Sponsor:

SENATOR EVE FRANKLIN. I want to thank those who traveled and took off a day's work in order to testify because it shows the Committee how significant an issue it is. One of the folks mentioned to me that a good example of the intangible cross-up was the reality utility companies paid lobbyists to share their story; the private individuals didn't have that luxury because coming today represented a loss to their business. In my estimation, these folks are facing the worst of the old regulated market and the worst aspects of the unregulated market, in that they're competing with folks who have a structural advantage

(customer base, marketing profiles, customer data base, logo recognition, etc.).

John Alke referred to the amendment regarding royalties. This amendment, if you consider **Bob Anderson's** amendment, is struck so I don't think that's the core of his argument. His statement that the issue of rate-making was highly sophisticated would lead us to believe the lay person couldn't understand it. I think the proponents really do understand it and their stories are clear. They're competing against folks who have market advantage based on intangibles that aren't accounted for. These are the hallmarks of anti-trust cases throughout the country (rest of the sentence lost because of turning the tape)

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The MPC representative thought this was duplicative of PSC's oversight but in reality it was PSC's position that when complaints were brought, they didn't have a statutory leg to stand on, i.e. no ability to engage in a findings process under current law.

I know the PSC is not unanimous in its position and I wish they could have been here because they look at their role as public interest. When we look at the well-being of the consumer, we can't discount these individuals and the reality of their value to rate payers and consumers throughout the state.

I have offered a definition of cross-subsidization which was in response to a question on behalf of the of utilities

EXHIBIT (bus38a06) .

My position on **Commissioner Bob Anderson's** amendments is sometimes there has to be compromise and we're happy for it. The fact that PSC can come in with its two or three members and support this case-by-case is a good thing. My concern is we're almost establishing an unlevel playing field by omission; however, it may be the best we can do. I would like to be able to talk with Commission members and other stakeholders to see if we can come to some agreement as to how to proceed. The utility companies say they don't cross-subsidize but out-in-the field audits show the records but not the reality of practices in the field -- those types of audit are only of partial value.

{Tape : 2; Side : A; Approx. Time Counter : 3.2}

Sponsor: SENATOR FRED THOMAS, SD 31, STEVENSVILLE

Proponents: Chris Gallus, MT Chamber of Commerce
Evan Barrett, MT Economic Developers

Opponents: None

Opening Statement by Sponsor:

SENATOR FRED THOMAS, SD 31, STEVENSVILLE. This bill is a non-appropriations/appropriations bill; however, on Page 2, Assumption 8, assumed the \$5 million would be appropriated in HB 2. The idea of **SB 459** is to put together a fund which would allow communities to put together a proposal to build an industrial park. We made jobs and income and raising the standard of living a priority of this Session, and one of the best things we can do is come out with a "bricks and mortar" program. This would enable businesses to plug in and be running in a short period of time as opposed to their taking a great deal of time to buy land, put all utilities together, etc. The idea of an industrial park is to have streets, lights, phone, sewers, gas, electricity and be ready for the new businesses. If the infrastructure is there, businesses will locate. If this bill passes, it would just be set up in the law; funding would have to be allocated if it were to actually happen.

Proponents' Testimony:

Chris Gallus, Montana Chamber of Commerce. Anything we can do in terms of economic development to provide infrastructure to communities, especially the smaller ones, will be of great benefit to the state. One of our biggest problems is our ability to provide infrastructure to encourage development. We think it would be important for you to pass **SB 459**.

Evan Barrett, Montana Economic Developers. This bill would help solve some problems in terms of economic development because when you plan to develop an industrial area, one of the biggest problems is infrastructure, a problem that isn't that expensive to solve. Currently Treasure State Endowment is in place to provide support for this; however, it's skewed toward health and safety issues and toward industrial infrastructure purposes. There is another vehicle, Tax Increment Financing Industrial District, which allows you to capture the taxes in the district to create the infrastructure; however, the problem there is getting the first dollar to do it. Most Montana business development will be modest-sized. They still need the infrastructure but don't provide enough taxes to create tax

increment that would work to the benefit of creating this infrastructure. It appears this bill would provide some of that initial seed capital to get something started so modest-sized businesses can take advantage of it. We support the bill as it's written.

Opponents' Testimony: None.

{Tape : 2; Side : A; Approx. Time Counter : 11.7}

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY asked if the Department of Commerce would be evaluating the grants and setting up the master sheet; also, when the money was gone, would the grants be gone also. **SEN. FRED THOMAS** affirmed all the questions. The termination date could be extended to 2003 or there could be a limit on how much would be given each project because as it is, people who got their requests in right away would have the heavy consideration.

SEN. MCCARTHY asked if the sponsor would consider an amendment that would limit the amount that could go to a project so it could go further throughout the state. **SEN. THOMAS** said he would.

SEN. MCCARTHY asked if the county or county government would be responsible for writing the grant. **SEN. THOMAS** said any entity beyond the public could apply.

SEN. MIKE SPRAGUE commented these grants would not have to be repaid; therefore, the decisions would be based on emotions, rather than economics or logic. **SEN. THOMAS** agreed the bill didn't require repayment. The thing he cared most about was setting this up so good businesses would be attracted. If the Committee thought it should be different, he could live with it.

{Tape : 2; Side : A; Approx. Time Counter : 17}

SEN. SPRAGUE commented the money in this bill was only seed money. Developers still would have to come up with the remainder themselves. He thought this seed money should be repaid. **Mr. Barrett** said nobody liked to see spec parks. Government put money into development and then the site stayed vacant for a long period of time because there was no plan. The criteria in this bill determined things should be done in a sensible way. As for repayment, he wasn't sure that was a valid option, on the basis that in order for local government to incur indebtedness, they would have to obligate themselves to making those payments. In other words, if there was going to be repayment, the whole bond

market issue and the rate would have to be considered because if the local government were to incur indebtedness, they could probably do it now for the same rate. The advantage is the jump-starting of the project with non-repayment.

SEN. SPRAGUE commented if the local government entity was called a Trade Port or Port Authority, i.e. a separate government entity from an elected entity, and their job was to generate profit, wouldn't the issue he previously asked about somewhat the same. He explained it as a private sector taxpayer subsidizing a government entity which was in the business of generating profit.

SEN. THOMAS said **SB 459** was a way in which the state would be subsidizing the kind of infra structural growth referred to. Port Authority was a public body which supported another public body. The courts had the bonding capability and could do it on their own if they felt they had the resources for repayment. The real issue is the repayment mechanism. If the state is making a loan it would have to ensure the repayment capability was there and if it was, the state might not have to make the loan because the money could be gotten somewhere else.

SEN. SPRAGUE commented the Treasure State Endowment had a repayment provision. **SEN. FRED THOMAS** said Treasure State Endowment was pure grants, though they had criteria to try to leverage funds to ensure the investment would be sensible. The interest from the Endowment was granted annually to the Legislature for specific projects.

Closing by Sponsor:

SENATOR THOMAS. This is really an idea in the form of a bill and the tough part is getting it funded. When we came into the Session there was lots of talk about jobs and income and raising the standard of living. I felt the best way was to use those dollars to get some bricks and mortar. If this bill could get 10 industrial parks across the state, particularly in the smaller towns, it would be good. People want to live in smaller communities. Some could relocate their businesses when they move to these communities or they could start a new one. This bill would prepare the ground for them. This option should get due consideration.

(**CHAIRMAN JOHN HERTEL** relinquished the chair to **VICE CHAIRMAN MIKE SPRAGUE** so he could present **SB 439**).

{Tape : 2; Side : A; Approx. Time Counter : 24.9}

HEARING ON SB 439

Sponsor: SENATOR JOHN HERTEL, SD 47, MOORE

Proponents: Page Dringman, Montana Ranch Vacation Association
Jean Johnson, MT Guide & Outfitters Assoc.
Stuart Doggett, MT Innkeepers
Paul Van Cleve, MT Ranch Vacation Assoc.
Kelly Flynn, rancher

Opponents: None

Informational Testimony: Kathleen Martin, Department of Public
Health & Human Services

Opening Statement by Sponsor:

SENATOR JOHN HERTEL, SD 47, MOORE. This bill deals with small establishments such as guest ranches, outfitting, etc., and is trying to determine whether these small businesses should be required to follow the strict rules of motels, hotels, etc. The issue is how many guests a facility can have before it is required to be licensed. A seasonal establishment operates for less than 120 days and serves at least 9 but not more than 40 people at one time. A small establishment offers accommodations for at least 9 or no more than 24 people at one time. An example of the problem is what if a guest ranch normally serves 8 guests but on rare occasion will have 10 at one time. Should they be required to have a license from the Department of Public Health and Human Services (DPHHS)? SB 118 from the 1997 Legislature originated with the guest ranch industry, some of whom were being forced to license as a hotel/motel and were subject to rules and restrictions never meant for a guest ranch. That bill was drafted to provide unique recreational service providers with protection from regulations of DPHHS. There is no compelling reason why averaging of guests can't be the yardstick by which to measure whether a small guest ranch or outfitting facility must be licensed. The averaging procedure is what **SB 439** is trying to address; it would allow a facility to have 10 guests on occasion and still not have to come under all the rules and regulations of the hotels/motels.

Proponents' Testimony:

Page Dringman, Montana Ranch Vacation Association (MRVA). Our association is a group of agricultural people who have added tourism as another component to their business. We were part of the impetus behind SB 118 in 1997 because some of our members were getting letters from some county sanitarians saying they had to be licensed the same hotels/motels statutes. Those

regulations are pretty difficult for small businesses to meet. So their members came together to decide on their issues and the bill was implemented to set up a negotiated rule-making process with DPHHS. In trying to figure out whether an establishment fell into a licensing requirement, we ran into problems because the intent was to exempt those who had eight or fewer. The stipulations of not more than 40 or 24 were a little unclear because did it mean if you took any more than that in any one day, would you fall under hotel/motel? The industry side thought they were talking about average on a weekly basis but they were in deadlock with DPHHS, who was supposed to get a legal opinion. The legal opinion never came forth nor are the rules in place; in fact, there hadn't been a meeting since last April and that was why this bill was here now. I'm not sure the language in Subsection (9) and (10) does exactly what it's supposed to do. Perhaps on Line 22 we might have to add "offering accommodations to between 9 and 40 people on an average per day" so the second sentence ties in. The second section deals with determining the average but the Department was concerned they could take up to 80 people; however, that isn't realistic. I hope the Committee will give this bill favorable consideration.

{Tape : 2; Side : A; Approx. Time Counter : 36}

Jean Johnson, Montana Outfitters & Guides Association. When we were asked whether we wanted to be involved, it made sense because there was an outfitter in Broadus who was expanding to include a bed and breakfast situation. He had three units in his house and the county sanitarian informed them they would have to build a separate kitchen for the husband and wife to eat out of those units. It wasn't logical or sensible, especially when the county sanitarian in another part of the state didn't make those demands. I want to give one example of why it's important there be some flexibility. Jack Rich is an outfitter from Seeley Lake who years ago saw the wisdom in diversifying his hunting business so he went into summer business with a kids horse camp. In 1995 he got a sizeable loan and diversified even further by building the main lodge and cabin with a capacity for 24. Then in the "shoulder season" they offered snowmobiling. They are sized for 24 and they booked a family party of 23, however, they ended up with 30 family members in the great room. Without the protection of this amendment and amended amendment he would be pulled into hotel/motel and very clearly he doesn't belong there. We thank both the Department and the sponsor for bringing this bill.

Stuart Doggett, Montana Innkeepers. We also participated in that negotiated rulemaking process and this amends the hotels/motels. We think this is a common sense approach and a fair bill. We ask your support.

Paul Van Cleve IV, Montana Ranch Vacation Association. I have one concern -- how many times will the averaging be done? I would recommend every five years because some may increase their capacity while others would prefer to decrease it. He read his written testimony **EXHIBIT (bus38a07)**.

Kelly Flynn, Hidden Hollow Ranch. I don't know what I am in regard to small or seasonal establishments. In 1968, we called our place a family vacation place and took just a few people at a time. I would prefer averaging because there have been times when I've been over the limit but below it at other times. We want to maintain our ranch where we take just a few people at a time.

{Tape : 2; Side : B; Approx. Time Counter : 0}

Opponents' Testimony: None.

Informational Testimony:

Kathleen Martin, Department of Health and Human Services (DPHHS). She submitted **EXHIBIT (bus38a08)** before she began her testimony. Some questions I have are: (1) How often do you do the averaging; (2) Who's supposed to do it; (3) Will it be calculated by DPHHS or by the operator; (4) Do you want this to be a retrospective review. We administer the licenses but don't do the inspections. We send out the renewal applications in November or December of each year and expect them back in either December or January with the necessary information before we can actually send the licenses out. Should we put something on the license application that let the operator calculate the average? Could the category of license change from year to year? We'd like a little guidance on that. We agree the previous statute wasn't very clear in the situations where you occasionally exceed your regular occupancy. I'm a little unsure how we're going to administer the averaging concept -- we don't want to administer it in an unintended way. We would like some guidance from the Legislature.

Questions from Committee Members and Responses:

SEN. BEA MCCARTHY wondered if the rulemaking ever got past "temporary." **Kathleen Martin** said the last rulemaking committee met in April, 1998, and didn't try to reconvene during the tourist season. Therefore, a rule hasn't been established for

guest ranches and outfitters. Current statute says they don't have to be licensed.

SEN. MCCARTHY asked if they were operating under July 1, 1993, rulemaking. **Ms. Martin** said she understood last session the bill said operators didn't need to be licensed until July 1, 1998, or when the rule was passed, whichever came first.

SEN. MCCARTHY asked if rulemaking authority had been established. **Ms. Martin** said it had but they hadn't been able to meet.

SEN. MCCARTHY asked if a tentative meeting had been scheduled and **Ms. Martin** said they would await the outcome of this bill before proceeding further.

SEN. MCCARTHY asked if this were put into an average, would families be required a separate refrigerator from the guests. **Ms. Martin** said quite a lot of work had been by DPHHS on food safety and felt the industry was comfortable with the compromises.

SEN. MCCARTHY asked the same thing of **Page Dringman** who told her the agreement was one refrigerator could be used by both guests and family; however, the capacity had to be large enough but it still hadn't been adopted.

SEN. MCCARTHY asked when it would be adopted and **Ms. Dringman** said she didn't know because no meeting had yet been scheduled.

Closing by Sponsor:

SENATOR JOHN HERTEL. As you heard from the testimony, some of the regulations are hard to meet and many times they don't seem to make a lot of sense or fit the situation. This bill is not attempting to change the regulations for the larger groups; it just gives flexibility to the smaller groups who will remain in that category. Sometimes unforeseen situations arise which might make the number go over that level to a small degree so I think the averaging system over one year makes good common sense. I think **SB 439** will help with rulemaking authority.

{Tape : 2; Side : B; Approx. Time Counter : 7.9}

EXECUTIVE ACTION ON SB 439

SEN. MCCARTHY moved that SB 439 DO PASS. Motion carried unanimously. 6-0

EXECUTIVE ACTION ON SB 263

Motion: SEN. SPRAGUE moved that SB 263 COME OFF THE TABLE.

Vote: Motion carried unanimously. 7-0

Motion: SEN. SPRAGUE moved that SB 263 DO PASS.

Discussion: Motion: SEN. COCCHIARELLA moved that SB 263 BE AMENDED.

Discussion: Amendments were handed out **EXHIBIT (bus38a09)**. Mr. Bart Campbell, Legislative Assistant, explained the amendments. The major changes were throughout the bill the word "permission" which was changed to "consent." Throughout the bill, the word "after market" was changed to "non original." No. 9 was moved only because of alphabetical order. No. 12 was to require consent verifiable by their signature on the repair estimate or work order. No. 13 was a new Subsection 2 where they notify the customer anytime that a non original crash repair part was being installed even on cars that were more than four years old. The fraud section in No. 15 said that if a non original repair part is used and they bill it as an original, that would be insurance fraud. This fraud section only addresses the original or non original part used to repair the car.

Vote: Motion that SB 263 BE AMENDED carried unanimously. 7-0

Motion/Vote: SEN. COCCHIARELLA moved that SB 263 DO PASS AS AMENDED. Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 409

Motion/Vote: SEN. SPRAGUE moved that SB 409 BE TABLED. Motion carried 6-1 with SENATOR COCCHIARELLA voting no.

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. JOHN HERTEL, Chairman

MARY GAY WELLS, Secretary

JH/MGW

EXHIBIT (bus38aad)